

## § 20.404

## 33 CFR Ch. I (7–1–05 Edition)

this part or impair the right of any party to place any matters at issue.

(b) Unless directed otherwise by the Chief ALJ, a presiding ALJ may, either in response to a motion or on his or her own motion, for good cause, sever any administrative proceeding with respect to some or all parties, claims, and issues.

### § 20.404 Interested persons.

(a) Any person not a party to a class II civil penalty proceeding under 33 U.S.C. 1321(b)(6) who wishes to be an interested person in the proceeding shall, 30 days or less after publication in the FEDERAL REGISTER of the public notice required by § 20.402, file with the Hearing Docket Clerk either—

(1) Written comments on the proceeding; or

(2) Written notice of intent to present evidence at any hearing in the proceeding.

(b) The presiding ALJ may, for good cause, accept late comments or late notice of intent to present evidence.

(c) Each interested person shall receive notice of any hearing due in the proceeding and of the decision in the proceeding. He or she may have a reasonable opportunity to be heard and to present evidence in any hearing.

(d) The opportunity secured by paragraph (c) of this section does not extend to—

(1) The issuance of subpoenas for witnesses;

(2) The cross-examination of witnesses; or

(3) Appearance at any settlement conference.

## Subpart E—Conferences and Settlements

### § 20.501 Conferences.

(a) Any party may by motion request a conference.

(b) The ALJ may direct the parties to attend one or more conferences before or during a hearing.

(c) The ALJ may invite interested persons to attend a conference, other than a settlement conference, as the ALJ deems appropriate.

(d) The ALJ shall give reasonable notice of the time and place of any conference to the parties, and to inter-

ested persons if invited. A conference may occur in person, by telephone, or by other appropriate means.

(e) Each party, and any interested person invited, shall be fully prepared for a useful discussion of all issues properly before the conference, both procedural and substantive, and be authorized to commit themselves or those they represent respecting those issues.

(f) Unless the ALJ excuses a party, the failure of a party to attend or participate in a conference, after being served with reasonable notice of its time and place, waives all objections to any agreements reached in it and to any consequent orders or rulings.

(g) The ALJ may direct that any of the following be addressed or furnished before, during, or after the conference:

(1) Methods of service and filing.

(2) Motions for consolidation or severance of parties or issues.

(3) Motions for discovery.

(4) Identification, simplification, and clarification of the issues.

(5) Requests for amendment of the pleadings.

(6) Stipulations and admissions of fact and of the content and authenticity of documents.

(7) The desirability of limiting and grouping witnesses, so as to avoid duplication.

(8) Requests for official notice and particular matters to be resolved by reliance upon the substantive standards, rules, and other policies of the Coast Guard.

(9) Offers of settlement.

(10) Proposed date, time, and place of the hearing.

(11) Other matters that may aid in the disposition of the proceeding.

(h) No one may stenographically report or otherwise record a conference unless the ALJ allows.

(i) During a conference, the ALJ may dispose of any procedural matters on which he or she is authorized to rule.

(j) Actions taken at a conference may be memorialized in—

(1) A stenographic report if authorized by the ALJ;

(2) A written transcript from a magnetic tape or the equivalent if authorized by the ALJ; or

(3) A statement by the ALJ on the record at the hearing summarizing them.

#### **§ 20.502 Settlements.**

(a) The parties may submit a proposed settlement to the ALJ.

(b) The proposed settlement must be in the form of a proposed decision, accompanied by a motion for its entry. The decision must recite the reasons that make it acceptable, and it must be signed by the parties or their representatives.

(c) The proposed decision must contain—

(1) An admission of all jurisdictional facts;

(2) An express waiver of—

(i) Any further procedural steps before the ALJ; and

(ii) All rights to seek judicial review, or otherwise challenge or contest the validity, of the decision;

(3) A statement that the decision will have the same force and effect as would a decision made after a hearing; and

(4) A statement that the decision resolves all matters needing to be adjudicated.

### **Subpart F—Discovery**

#### **§ 20.601 General.**

(a) Unless the ALJ orders otherwise, each party—and each interested person who has filed written notice of intent to present evidence at any hearing in the proceeding under § 20.404—shall make available to the ALJ and to every other party and interested person—

(1) The name of each expert and other witness the party intends to call, together with a brief narrative summary of the expected testimony; and

(2) A copy, marked as an exhibit, of each document the party intends to introduce into evidence or use in the presentation of its case.

(b) During a pre-hearing conference ordered under § 20.501, the ALJ may direct that the parties exchange witness lists and exhibits either at once or by correspondence.

(c) The ALJ may establish a schedule for discovery and shall serve a copy of any such schedule on each party.

(1) The schedule may include dates by which the parties shall both exchange witness lists and exhibits and file any requests for discovery and objections to such requests.

(2) Unless the ALJ orders otherwise, the parties shall exchange witness lists and exhibits 15 days or more before hearing.

(d) Further discovery may occur only by order, and then only when the ALJ determines that—

(1) It will not unreasonably delay the proceeding;

(2) The information sought is not otherwise obtainable;

(3) The information sought has significant probative value;

(4) The information sought is neither cumulative nor repetitious; and

(5) The method or scope of the discovery is not unduly burdensome and is the least burdensome method available.

(e) A motion for discovery must set forth—

(1) The circumstances warranting the discovery;

(2) The nature of the information sought; and

(3) The proposed method and scope of discovery and the time and place where the discovery would occur.

(f) If the ALJ determines that he or she should grant the motion, he or she shall issue an order for the discovery, together with the terms on which it will occur.

#### **§ 20.602 Amendatory or supplementary responses.**

(a) Any party or interested person shall amend or supplement information previously provided upon learning that the information—

(1) Was incorrect or incomplete when provided; or,

(2) Though correct or complete when provided, no longer is.

(b) The party or interested person shall amend or supplement that information by following the procedures in § 20.305.

#### **§ 20.603 Interrogatories.**

(a) Any party requesting interrogatories shall so move to the ALJ. The motion must include—